

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

PINEHURST SUBDIVISION
HOMEOWNER'S ASSOCIATION,

PLAINTIFF

vs.

CAUSE NO. 02-11-1596(L)PINEHURST PARTNERS, INC.,
BILLY TODD D/B/A BILLY TODD HOMES,
AND ALL PERSONS HAVING OR CLAIMING TO
HAVE ANY INTEREST, LEGAL OR EQUITABLE
IN THE REAL PROPERTY DESCRIBED HEREIN,

DEFENDANTS

AGREED ORDER

THIS CAUSE came on this day upon the sworn Complaint of the Plaintiff, Pinehurst Subdivision Homeowner's Association, by and through counsel, Honorable Leigh Ann Rutherford, and upon entry of appearance of William P. Myers of Myers Graves & Associates, PLLC on behalf of Pinehurst Partners, Inc. and the parties representing to the Court that an agreement has been reached, and the Court being advised of the terms and conditions of the agreement finds as follows:

1. The restrictive covenants for Pinehurst Subdivision, Section "I" were recorded on September 13, 1999 in the Chancery Clerk's office of DeSoto County, Mississippi in Deed Book 359, Page 292. The covenants were modified by Pinehurst Partners, Inc., the developer of the subdivision, and the modified restrictive covenants of Pinehurst Subdivision, Section "I" were recorded on March 19, 2002 in the Chancery Clerk's office of DeSoto County, Mississippi in Plat Book 414 Page 354. The legality of this modification

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was put into issue by the filing of this case at bar.

2. The only modification made to the covenants by Pinehurst Partners, Inc. is contained in paragraph 4 of the restrictive covenants. The amended covenants state that all garages must open from the **front** or side of the house as opposed to the prior language in the earlier recorded covenants, which states that all garages must open from the **rear** or side of the house.

3. The modification of the covenants was undertaken by Pinehurst Partners, Inc. at a time when Pinehurst Partners, Inc., asserts it was the owner of a majority of the lots in Pinehurst Subdivision, Section "I". Pinehurst Partners, Inc. believed that the language in the covenants gave Pinehurst Partners, Inc. the authority to modify the covenants as the owner of a majority of the lots.

4. Two homes have been constructed in the subdivision by Defendant, Billy Todd, since recording of the modified covenants. Those homes are located on lots 228 and 229. Both homes have been constructed with garages that open from the front of the house. The two homes constructed by Billy Todd comply in all respects with the modified covenants.

5. The parties have agreed that the covenants should be returned to the original version so as to prohibit further construction of any homes in the subdivision with garages that open from the front. The parties have agreed to restore the covenants to the language contained in the restrictive covenants that were recorded on September 13, 1999 in Deed Book 359, Page 292. That the Chancery Clerk should be directed to notate on the face of the

modification in Book 414, Page 354 cancellation of this modification by reference to this Order which shall be filed among the Deed Records of the Chancery Clerk of DeSoto County, Mississippi. The parties further agree that once the covenants have been modified by judicial decree pursuant to the agreement of the parties, that no party or any majority of lot owners will be authorized to amend the covenants in any way prior to January 1, 2005.

6. Upon entry of this Decree, the parties have agreed that the Lis Pendens filed by Pinehurst Subdivision Homeowner's Association on all lots in Section "I" will be immediately released. That the Chancery Clerk will be directed to cancel the Lis Pendens by notation and reference to the book and page of the filing of this Order. Release of the Lis Pendens will allow Billy Todd to immediately market the two houses constructed on Lots 228 and 229. Pinehurst Subdivision Homeowner's Association, has not in the past and will not in the future, interfere in any way with Billy Todd's efforts to market the homes on Lots 228 and 229, or with the ability of Pinehurst Partners, Inc. to market any of remaining unsold lots. The parties agree that it is in their mutual best interest, and the best interest of all owners of lots in Pinehurst Subdivision, to refrain from action that may damage the reputation of the subdivision.

7. Once the covenants have been restored, by final judicial decree of this Court after notice and hearing are had upon the necessary parties as determined by this Court, to the language contained in the document recorded in Deed Book 359, Page 292, Pinehurst Partners, Inc. will convey title to all common areas within Pinehurst Subdivision in fee

simple to Pinehurst Subdivision Homeowner's Association. Prior to the conveyance of the common areas, Pinehurst Partners, Inc. will employ the services of engineer, Greg Russell, to render an opinion as to the stability of the three (3) lake levees of the various sections of Pinehurst Subdivision. Pinehurst Partners, Inc. will undertake any repair that is required by the engineer to insure that the levees are stable. Pinehurst Partners, Inc. will provide a copy of the engineer's report to Pinehurst Subdivision Homeowner's Association regarding all three (3) lake levees.

8. Once the covenants have been restored, by final judicial decree of this Court, to the language contained in the document recorded in Deed Book 359, Page 292, Pinehurst Partners, Inc. will appoint an architectural control committee to review the plans of the subdivision as contemplated by paragraph 4 of the restrictive covenants for Pinehurst Subdivision, Section "I". Prior to the appointment of an architectural control committee, Pinehurst Partners, Inc. will require all future homes constructed in Section "I" to comply with the restrictive covenants, specifically excluding any home with a garage that opens from the front, as set forth in Deed Book 359, Page 292.

9. Pinehurst Partners, Inc., at its sole cost, will construct a 10' x 12' pier made of treated yellow pine with a 42" hand rail around the exterior of the pier. The pier will be located 10' from the shoreline and will be connected to the shoreline by a 10' x 4' walkway. The walkway will connect with a 4' wide broom-finished concrete sidewalk that will extend from the walkway along the levy to near the boundary of the common area and then extend

to the street.

10. Within ninety (90) days upon entry of a final decree in this cause restoring the covenants to the language contained in the document recorded in Deed Book 359, Page 292, Pinehurst Partners, Inc. will resurface all streets in Pinehurst Subdivision, Section "I".

11. As partial reimbursement for attorney's fees incurred by Pinehurst Subdivision Homeowner's Association, Pinehurst Partner's, Inc. will pay to the attorney for Pinehurst Subdivision Homeowner's Association, Honorable Leigh Ann Rutherford, the sum of \$1,920.50.

12. This Court has jurisdiction of this matter pursuant to Mississippi Code Annotated (1972) as amended §19-27-31 and pursuant to Article § 159 Mississippi Constitution.

13. Venue is proper in DeSoto County, Mississippi pursuant to Mississippi Code Annotated (1972) as amended §11-5-1 in that the subject property is located in DeSoto County, Mississippi.

14. Parties necessary for full adjudication of all issues in this cause and ratification of the agreement of the parties, are all owners of lots in Pinehurst Subdivision, Section "I", all parties with liens or any other interest in lots in Section "I" whether legal or equitable, as well as the City of Southaven, the subject property lying within the municipal limits of the City of Southaven.

15. That the parties desire that the Court adjudicate Lots 228 and 229, Section "I"

Pinehurst, as part of this compromised settlement, in full compliance for all purposes with the restrictive covenants of Pinehurst Subdivision as regards the facing of the garages on these two lots.

16. That counsel for Pinehurst Partners, Inc. shall prepare the necessary legal documents required herein and submit to counsel for Pinehurst Subdivision Homeowner's Association for approval.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Process shall issue to the following parties returnable to the 29th day of July, 2003 at 8:30 a.m.:

a. City of Southaven by service upon the Mayor of the City, Honorable Greg Davis, 8710 Northwest Drive, Southaven, Mississippi 38671.

b. Owners of Lots 209 - 253, being all of the lots in Pinehurst Subdivision, Section "I".

c. All lien holders on Lots 209 - 253 Pinehurst Subdivision, Section "I".

2. The Summons shall attach a copy of this Order advising all parties of the agreement between Pinehurst Subdivision Homeowner's Association and Pinehurst Partners, Inc., advising all parties of the date of the hearing. That should any interested party have any objection to the agreements reached by the parties as contained within this Order, that party shall have filed in the Court file a written objection or personally appear before this Court at the day and time set forth in this Order. The failure to object to the agreement of the

parties or appear at the hearing will constitute a waiver of any right of that party to later object to the decision of this Court.

3. That the Chancery Clerk is directed to file this Order among the Deed Records of the Chancery Court in DeSoto County, Mississippi. That the description of the property affected herein is : Lots 209 - 253 of Pinehurst Subdivision, Section "I", Section 10, Township 2, Range 7, DeSoto County, Mississippi as recorded in Plat Book 66, Page 5 in the records of the Chancery Clerk of DeSoto County, Mississippi.

4. That the Chancery Clerk is further directed by reference and notation to this Order to release the Lis Pendens filed by the Plaintiff against the Defendants herein and to reinstate the restrictive covenants as recorded at Book 359, Page 292 as the restrictive covenants of Pinehurst Subdivision, Section "I".

5. That any additional cost of court associated herewith shall be borne by Pinehurst Partners, Inc.

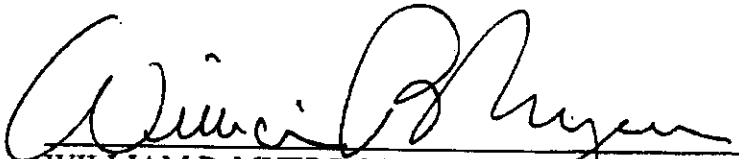
ORDERED, ADJUDGED AND DECREED this the 29th day of April, 2003 and executed *nunc pro tunc* this the 8th day of May, 2003.


PERCY L. LYNCHARD, CHANCELLOR

AGREED:


LEIGH ANN RUTHERFORD, MB NO. 5750
2430 CAFFEY STREET, SUITE B
HERNANDO, MS 38632
662-449-0422

Attorney for Pinehurst Subdivision Homeowner's Assoc.


WILLIAM P. MYERS, MB NO. 3716
MYERS GRAVES & ASSOCIATES, PLLC
140 WEST CENTER STREET
HERNANDO, MS 38632
(662) 429-1994

Attorney for Pinehurst Partners, Inc and Billy Todd.

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STATE OF MISSISSIPPI, COUNTY OF DESOTO
I HEREBY CERTIFY that the above and foregoing is
a true copy of the original filed in this office.
This the 19th day of May, 2003
W. E. Davis, Clerk of the chancery court

By J. K. K... D.C.